IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.1204 of 2005.

Judgment reserved on:27.2.2007.

Date of decision: 5th March, 2007.

Rajesh Kumar ..Petitioner

-Versus-

State of H.P. and others ..Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes

For the Petitioner: Mr.Sandeep Kaushik, Advocate.

For Respondents: Mr.M.S.Chandel, A.G. with Mr.R.M.Bisht, Dy.A.G.

Deepak Gupta, J.

This writ petition is directed against the order passed by the learned H.P. State Administrative Tribunal dated 2.11.2005 whereby O.A. filed by the petitioner has been rejected.

Brief facts of the case are that the petitioner was appointed as trained graduate teacher in the year 1998. He was initially posted in Government High School, Karasa, Tehsil Rohru, District Shimla.

The respondent State issued a notification on 7th July, 1999 declaring certain areas of the State to be "Difficult Area

Sub-Cadre". Tehsil Rohru of Shimla District falls in this Sub-Cadre. Clause 4 of the notification reads as follows:

> "4.The direct recruit employees posted against the Sub-Cadre shall have a minimum tenure of five years in the sub-cadre. Before completion of five years of service in the difficult areas, options will be invited from all the members of the sub-cadre whether they would like to continue to be posted in difficult area or they will like to be posted in non-difficult areas. In case an employee of the sub-cadre opts for posting outside the difficult area, he will be posted in any of the three districts of his choice in the non-difficult areas of the State and process of transfer from sub-cadre to the main cadre will be completed within one year after completion of the tenure of five years."

Thereafter, the State Government issued another notification on 15th July, 2002, relevant portion of which reads as follows:

> "The tenure in the Difficult area sub-cadre will be three years instead of five years. The female and handicapped employees will be exempted from posting under the difficult area sub-cadre."

After this notification had been issued the petitioner made a request that he had completed more than 3 years in difficult area sub-cadre and may be posted to some other stations out of the three Districts of his choice. This request was allowed and vide order dated 26th October, 2002 the services of the petitioner were placed at the disposal of the Deputy Director, Bilaspur for adjustment in GMS Kharkari u/c GHS Saloa Bilaspur.

The notification reducing the minimum stay in the difficult area from 5 years to 3 years had been issued only by the Education Department and the State Government issued a similar notification in respect of all other Departments and the minimum period of service was reduced from 5 years to 4 years vide letter dated 11th July, 2003.

It appears that the State Government found it difficult to find adequate number of employees to be posted in the difficult area sub-cadre after the reduction of the minimum period from 5 years to 3 years and 4 years as indicated above. Consequently, the State Government issued another notification on 15th September, 2004 withdrawing the earlier orders and the State Government decided that the minimum tenure of the stay of an employee in difficult area sub-cadre must be 5 years. This decision was made applicable on uniform basis to all the departments including the Department of Education. Admittedly the petitioner had completed about 4 years service in the difficult area sub cadre when he was transferred from Karasa to Saloha. After the issuance of the notification again raising the minimum period of five years the petitioner was transferred to SSS Kawar vide order dated 6.10.2005. This school falls in a difficult area sub cadre.

The petitioner challenged his transfer before the Tribunal. The Tribunal rejected this petition on the ground that since the petitioner had not completed the minimum period of stay of five

years in the difficult area sub cadre the State Government was entitled to again transfer him to the difficult area. This order is under challenge before us.

We have heard learned counsel for the parties. Sh.Sandeep Kaushik, learned counsel appearing on behalf of the petitioner contends that a right had accrued to the petitioner under the notification dated 15th July, 2002 to be transferred after completing 3 years service in the difficult area sub-cadre. He submits that the petitioner had already completed 4 years in the difficult area and the fresh notification issued on 15.9.2004 again restoring five years as minimum period to be served in difficult area cannot be given retrospective effect.

On the other hand Sh.M.S.Chandel, learned Advocate General contends that the notification dated 15th September, 2004 only restored the original position. He also contends that the service rendered by the petitioner prior to 7th July, 1999 when the difficult area sub-cadre was created cannot be taken into consideration.

We have given a careful consideration to the arguments raised by the learned counsel for the parties. We find that the scheme of the government declaring a difficult area sub cadre and also posting fresh recruits in the difficult areas is a laudable scheme since it is well known that the employees who are entrenched in service do not happily and willingly join postings in difficult areas. The State had initially provided that the

minimum period of service in difficult area should be five years. The State for reasons best known to it on 15th July, 2002 issued another notification reducing the period from 5 years to 3 years. There is no dispute that this notification is applicable to the Department of Education. Why the State reduced the period is not clear? However, once the State reduced the period it gave a right to the employees who had served more than 3 years in the difficult areas to seek transfer outside the difficult areas. This right vested in the employees and the State accepted the request of the petitioner to be transferred outside the difficult area. Now after 3 years the State cannot be permitted to put the clock back and again ask the petitioner to complete the balance period in the difficult area. The letter dated 15th September, 2004 cannot be given retrospective effect. The employees who have been given benefit under the notifications dated 15th July, 2002 and 11th July, 2003 cannot be now compelled to complete five years in the difficult areas.

While taking this view we are taking into consideration the difficulties faced by the employees also. Initially when the employees are posted in the difficult area sub cadre they knew they had to remain there for five years. They completed 3 or 4 years in the difficult area and the Government in the meantime issued notifications reducing the minimum period of service to 3 years in the Education Department and four years in other Departments. The employees are given benefit of this

concession. Now after they have been given advantage of this concession they cannot be again asked to go back to serve in the difficult area and complete the tenure of five years. This would be unjust and inequitable.

In view of the above discussion, we set-aside the order of the learned Tribunal dated 2.11.2005 passed in O.A. No.2713 of 2005 and also set-aside the order of transfer of the petitioner dated 6.10.2005 (Annexure P-5) whereby he has been transferred from GMS Kharkari U/c Saloa Bilaspur to SSS Kawar (SML). However, while setting aside the order of transfer we note that the petitioner has now completed more than 3 years at Saloa also. The State Government shall, therefore, be free to transfer the petitioner as per the exigencies of service.

Petition disposed of in the aforesaid terms. No costs.

CMP No.2270 of 2005:

In view of the disposal of the writ petition, this application is also disposed of. The stay order dated 5.12.2005 is vacated.

(Deepak Gupta)
Judge

March 5, 2007. **(Surinder Singh)**
PV **Judge**